

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD G. STINSON,

Petitioner,

v.

BOARD OF PRISON TERMS, et
al.,

Respondents.

No. C 07-0282 MMC (PR)

**ORDER DISMISSING PETITION
FOR A WRIT OF HABEAS
CORPUS AS MOOT; DENYING
PETITIONER'S PENDING
MOTIONS**

(Docket Nos. 11, 13 & 17)

On January 17, 2007, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 2006 parole revocation hearing. On June 22, 2007, the Court ordered respondent to show cause why the petition should not be granted based on petitioner's cognizable claims for relief. On September 20, 2007, respondent filed an answer accompanied by a memorandum and exhibits; on October 24, 2007, petitioner filed a traverse.

BACKGROUND

On October 9, 2001, petitioner was convicted in Alameda County Superior Court of possession of a blank check; he was sentenced to three years in state prison. On September 1, 2005, petitioner was released on parole; on January 11, 2006, he was arrested for domestic battery, violation of a court order, and brandishing a weapon. On February 16, 2006, a

1 parole revocation hearing was held; petitioner's parole was revoked and he was ordered
2 returned to prison for a twelve-month term. While incarcerated, petitioner filed several state
3 habeas petitions, all of which were denied. On January 17, 2007, petitioner filed the instant
4 petition. At some point thereafter his parole revocation term ended and he was released from
5 prison. Petitioner is not currently incarcerated.

6 In its order to show cause, the Court found the petition raised twenty-seven cognizable
7 claims challenging the constitutional validity of petitioner's parole revocation hearing.

8 DISCUSSION

9 In the answer to the petition, respondent argues (1) the petition is moot; (2) the
10 petition is unexhausted; and (3) petitioner is not entitled to relief on the merits of his claims.
11 For the reasons discussed below, the Court finds the petition is moot; accordingly, the Court
12 will dismiss the petition without reaching the matter of exhaustion or the merits of
13 petitioner's claims.

14 A. Mootness

15 Article III, § 2, of the Constitution requires the existence of a case or controversy
16 through all stages of federal judicial proceedings. In order to satisfy the case-or-controversy
17 requirement, a habeas petitioner "must have suffered, or be threatened with, an actual injury
18 traceable to the [respondent] and likely to be redressed by a favorable judicial decision."
19 Spencer v. Kemna, 523 U.S. 1, 7 (1998) (internal quotation and citation omitted).

20 "An incarcerated convict's (or a parolee's) challenge to the validity of his conviction
21 always satisfies the case-or-controversy requirement, because the incarceration (or the
22 restriction imposed by the terms of the parole) constitutes a concrete injury, caused by the
23 conviction and redressable by invalidation of the conviction." Id. Once the convict's
24 sentence or parole term expires, however, some concrete and continuing injury other than the
25 now-ended incarceration or parole – some "collateral consequence" of the conviction – must
26 exist if the suit is to be maintained and not considered moot. Id.

27 Courts may presume that a criminal conviction has continuing collateral
28 consequences. See id. at 8-12. This presumption does not extend to parole revocations,

1 however. See id. at 12-13. Rather, if the term imposed for violating parole has been served,
2 a petitioner who seeks to challenge the revocation of his parole must demonstrate that
3 continuing collateral consequences exist. Cox v. McCarthy, 829 F.2d 800, 803 (9th Cir.
4 1987). The potential for detriment in a future parole or sentencing proceeding, impeachment
5 in future court proceedings, or use against the petitioner if he appears as a defendant in a
6 future criminal proceeding are not sufficient to constitute collateral consequences. See
7 Spencer, 523 U.S. at 14-16.

8 Here, respondent argues the instant petition should be dismissed as moot because
9 petitioner has fully served the parole revocation term imposed at the challenged 2006 parole
10 revocation hearing. In his traverse, petitioner addresses respondent's alternative arguments
11 that the claims raised in the petition are unexhausted and must be denied on the merits; he
12 does not, however, respond to respondent's argument with respect to mootness. It is clear
13 from the record in this matter that petitioner has fully served the parole revocation term
14 challenged by the instant petition; accordingly, because petitioner has not identified, let alone
15 demonstrated, continuing collateral consequences resulting from the parole revocation, the
16 petition will be dismissed as moot.

17 B. Petitioner's Pending Motions

18 Petitioner has filed three motions: a "Motion to Execute Judgment on the Undisputed
19 Facts," a "Motion for Summary Judgment," and a "Motion to Execute a Direct Verdict on the
20 Undisputed Facts." In each of these motions, petitioner asks the Court to find that he is
21 entitled to judgment as a matter of law based on his factual allegations with respect to the
22 challenged parole revocation hearing. Because the Court has found the petition is moot, the
23 merits of petitioner's claims will not be decided. Accordingly, the motions will be denied as
24 moot.

25 **CONCLUSION**

26 For the foregoing reasons, the Court orders as follows:

- 27 1. The petition for a writ of habeas corpus is hereby **DISMISSED** as moot.
28 2. Petitioner's pending motions are hereby **DENIED** as moot.

1 This order terminates Docket Nos. 11, 13 and 17.

2 The Clerk shall close the file.

3 IT IS SO ORDERED.

4 DATED: February 4, 2008


MAXINE M. CHESNEY
United States District Judge